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SUPREME COURT, U.S.

No. 496

FILED
SEP 23 1957
JOHN T. FEY, Clerk

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-v-

ANTHONY CARMINATI, WILLIAM McKENNEY, JR., FRANK RICH and MICHAEL GALGANO,

Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX FOR THE UNITED STATES OF AMERICA

PAUL W. WILLIAMS,
United States Attorney for the Southern District of New York
Attorney for the United States of America.

JEROME J. LONDIN,
ROBERT KIRTLAND,
Assistant United States Attorneys,
Of Counsel.

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INDEX TO APPENDIX

PAGE

Indictment 1a

Excerpts from Testimony 4a

David Ogelsby, for Government

Direct 4a

Cross 22a

Michael Botto, for Government

Direct 26a

Cross 41a

Stephen Giorgio, for Government

Direct 44a

Thomas Dugan, for Government

Direct 45a

Cross 50a

Anthony Johnson, for Government

Direct 50a

Abraham Schwartz, for Government

Direct 52a

Cross 57a

John Doyle, for Government

Direct 60a

Robert Clarke, for Government

Direct 63a

Indictment

(1)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

C-151-226

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(3)

THIRD COUNT

The Grand Jury further charges:

1. On or about the 23rd day of June, 1956 in the Southern District of New York,

FRANK RICH and
DAVID SHACKELFORD

the defendants, unlawfully, wilfully and knowingly did receive, conceal, sell and facilitate the transportation, concealment and sale of a narcotic drug; to wit,

approximately ½ ounce of heroin

after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Commissioner of Narcotics finds to be necessary to provide for medical and legitimate uses only, is prohibited. (Title 21, Sections 173 and 174, United States Code).

(4)

FOURTH COUNT

The Grand Jury further charges:

1. On or about the 28th day of June, 1956 in the Southern District of New York,

FRANK RICH

the defendant, unlawfully, wilfully and knowingly did receive, conceal, sell and facilitate the transportation, concealment and sale of a narcotic drug; to wit,

approximately 1 ounce of heroin

after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Commissioner of Narcotics finds to be necessary to provide for medical and legitimate uses only, is prohibited. (Title 21, Sections 173 and 174, United States Code).

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(8)

EIGHTH COUNT

The Grand Jury further charges:

On or about the 22nd day of August, 1956 in the Southern District of New York,

FRANK RICH

the defendant, unlawfully, wilfully and knowingly did

receive, possess, conceal and facilitate the transportation and concealment of a narcotic drug; to wit,

approximately 1 ounce of heroin

after the said narcotic drug had been imported and brought into the United States contrary to law, knowing that the said narcotic drug had theretofore been imported and brought into the United States contrary to law in that the importation and bringing of any narcotic drug into the United States, except such amounts of crude opium and coca leaves as the Commissioner of Narcotics may find necessary to provide for medical and legitimate uses only, is prohibited. (Sections 173 and 174, Title 21, United States Code).

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[For the Fourteenth Count see Galgano App. pp. 17a-23a]

Excerpts from Testimony

DAVID OGELSBY—for Government—Direct

* * * *

(158)

Q. Now, in early or mid-October of 1955, you were in John's Bar at 180th Street and Third Avenue? A. Yes.

Q. And you met Ralph and Sal? (159) A. Yes.

Q. What happened? A. Well, we were standing up in the corner, up at the end of the bar.

Q. Who are "we"? A. Sal, Ralph and myself.

Q. Was anyone else there? A. Well, a short time later three men came in.

Q. Do you know or did you know those men? A. No, I did not.

Q. What happened? A. Well, they walked back in the middle of the bar and they were standing there for a minute and then Ralph walked over to them.

Q. What did Ralph say to them?

Mr. Fusco: I object to this unless the three men can be identified, your Honor.

Mr. Londin: Your Honor——

Mr. Fusco: Please let me finish.

Mr. Londin: I am sorry.

Mr. Fusco: Unless the three men can be identified as one of the three alleged co-conspirators mentioned in the indictment.

Mr. Londin: The indictment also refers to (160) other co-conspirators to the grand jurors unknown, your Honor, and these are such.

Mr. Fusco: I object, if your Honor pleases.

The Court: Overruled.

Mr. Fusco: I respectfully except.

The Court: Mr. Fusco, you do not have to take an exception. You have your exception noted automatically under the rules of this court.

Mr. Fusco: Thank you very much.

Q. Mr. Ogelsby, what did Ralph say to these men and what did they say to him? A. Well, I don't know the conversation that they had, but I heard part of it, and they were talking about three pieces.

Mr. Fusco: I object to this. Who was talking about the three pieces?

Q. Who was talking about the three pieces? A. Ralph was talking about the three pieces and then——

Q. What is a piece?

Mr. Fusco: I object to this, if your Honor pleases.

Mr. Londin: If your Honor pleases——

The Court: I will allow him to answer.

(161)

Q. What is a piece?

The Court: Does a piece have a special meaning in the purchase or sale of narcotics?

The Witness: Yes, sir, it means an ounce of narcotics.

Q. And what happened after this conversation about the pieces which you heard? A. Well—well, all of us were staying up there and then Ralph went out and told them that he would have to make a call.

Q. Wait a minute. Ralph told who? A. Ralph spoke to the three men and said to the three men that he would have to make a phone call and he left the bar and was gone for a few minutes and then he came back.

And immediately after he was back in the bar, then another fellow came in behind him, and walked over to the men and then they talked for a few minutes and then the three men, Ralph, and the other fellow, left.

Q. Now, that night did you make any purchase from Ralph or Sal? A. I got an ounce.

Mr. Kove: Objected to, your Honor. (162) This is all leading.

The Court: Yes, please don't lead.

Q. What else happened that night, Mr. Oglesby? A. Well, I made a purchase. That is what I went up there for.

Q. What did you purchase? A. What is that?

Q. You said you went up there for a purchase. A. Yes.

Q. And what did you purchase? A. An ounce of heroin.

Q. And how much did you pay for it? A. The same $600.

The Court: Aren't you going to fix the place or from whom this purchase was made?

Mr. Londin: Yes, sir.

Q. From whom did you make this purchase and where? A. I think, I am not sure, but I think we went around on a street behind a school up there at 180th Street, but I am not too familiar with that place.

Q. Who went up there? A. Ralph and Sal, and I got it from Ralph. Ralph got out of the car, walked across the school yard, came back and then handed me the package.

(163)

Q. When were you next in John's Bar?

Mr. Fusco: That is certainly leading, your Honor, about John's Bar.

The Court: After this occasion were you ever in the bar again?

The Witness: Yes, I was there several nights, several days later.

Q. When were you there again? A. Several days later I was there again.

Q. What happened? A. Well, I went up to buy heroin and I met Ralph and Sal there, and while I am there——

Q. Was anyone else in the bar? A. The same three men.

Q. Whom you had seen before? A. The same three men that I had seen there before.

Q. I beg your pardon? A. The same three fellows that I had seen the previous time that they were there.

Q. And did you hear any of their conversation with Ralph and Sal? A. I don't remember, but one of the three men——

Q. What did you hear them say or do? (164) A. Well, I saw him take several quarters, saw them take several quarters and then——

Q. Who do you mean by that when you say you saw them? A. One of the three men, he took several or some quarters out of his pockets, and he threw seven up on the bar.

Q. You mean he threw seven quarters on the bar? A. Yes.

Q. Was anything said then? A. Well, I mean I don't know just what it was.

Q. If you heard it, say it. A. I heard that there was something said like Ming Gay to this fellow——

The Court: Something like ming gay?

The Witness: Yes.

Q. Something like ming gay? A. Like ming gay.

Q. Yes. A. But I couldn't hear it too good.

Q. You couldn't hear it too clearly? A. I couldn't hear it too clearly.

Q. What happened then? A. And one guy says "Gee, ming gay, three last night or the other night and seven tonight. What is (165) happening with these guys?"

Q. Who said that? A. One of the men who came into the bar.

Q. Let me see if I understand that. One of the three men who was with Ralph and Sal took seven quarters— A. Yes.

Q. —and threw them on the bar? A. Yes.

Q. Seven distinct quarters? A. Yes.

Q. And after he threw those seven quarters on the bar, did Ralph or Sal do anything? A. He made a call before. He didn't do anything right then and there, no.

Q. Who had made a call? A. Ralph had made a call.

Q. Was this before or after one of the three men threw the seven quarters on the bar? A. It was shortly before he threw the seven quarters on the bar.

Q. One of the three men threw seven quarters on the bar? A. Yes.

Q. And then you heard different pieces of the (166) conversation and you are not too clear about what it was? A. Yes.

Q. And then what happened? A. Then this other fellow, this other fellow when they came into the bar he said "Ming gay, three the other night, seven tonight. What is happening to those guys?"

Q. "Three the other night, seven tonight, what is happening to those guys?" A. Yes.

Q. Who said that? A. The fellow who came in after Ralph.

Q. Do you know the man's name? A. I didn't know it at that time.

Q. Did you subsequently learn it?

Mr. Sweeney: I move to strike that out.

Q. Did you subsequently learn this man's name? A. They called him Tony.

Q. Just Tony? A. He said Little Tony.

Q. And do you see Little Tony in court now. Will you please look around? A. All right.

(167)

Q. I think you may have to stand. A. I see a man resembling him.

Q. Where is that man? A. With the gray suit on the end over there (indicating).

Mr. Londin: May the record indicate that the witness has pointed to the defendant Anthony Carminati.

Mr. Kove: Now, if your Honor pleases, may the record indicate that the witness testified that he sees a man that resembles the man that he says is Little Tony.

The Court: That is right.

Q. Now, you say Little Tony said something about "Three the night before and seven tonight? What is happening to those guys?" A. That is right.

Q. And what happened then? A. He engaged in a conversation for a few minutes and then they left the bar.

Q. Did you have any transaction with Ralph and Sal? A. When he came back he brought back an ounce of heroin that I went up there for.

Q. And how much did you pay him? A. $600.

Q. Now, did there come a time when you discussed (168) with Ralph and Sal the quality of heroin? A. Yes—well, he told me that he had been——

Q. Who is "he"? A. Well, both of them in fact were talking about the stuff that they were getting which wasn't so good and they wanted to get something better.

Q. Now, did they tell you where they were getting their heroin from? A. I don't understand what you mean.

Q. Did Ralph and Sal tell you where they were getting their heroin from? A. From what place or from whom, do you mean?

Q. From whom? A. Well, he mentioned the fact——

Q. Who mentioned? A. Ralph like said that he was tired of taking the abuse that Tony had given him and that he was looking for another connection.

Q. And did he also complain about the quality of the heroin that Tony was giving him?

Mr. Kove: Objected to as leading, your Honor.

A. He said it wasn't up-to-date.

The Court: Yes. Please don't lead.

Q. To the best of your recollection will you (169) state in full what Ralph and Sal said to you on that occasion? A. Well, they said that they were tired of taking the abuse that Tony was giving them and that the stuff wasn't so good.

* * * *

(170)

Q. Did there come a time when you saw Little Tony again? A. Well, that was one occasion that I remember.

Q. Well, did you call Ralph and Sal at some time after this? A. Pardon?

Q. After this conversation with Ralph and Sal did you call them again? A. Yes, I called them again.

Q. Will you tell the Court and jury what you said to them and what they said to you?

The Court: Fix the time and the place.

Q. Approximately how soon after this did you call them again? (171) A. Well, a few weeks, I guess.

The Court: Can you fix the time?

The Witness: I am trying.

The Court: As to when it was approximately.

The Witness: I am trying now to do that.

The Court: We are not asking for exact dates, but approximately when did you see them again?

The Witness: It must have been around in November, I guess.

The Court: November, 1955?

The Witness: November, 1955.

The Court: And where did you see them?

The Witness: I saw them at a luncheonette at Park Avenue and Tremont.

Q. And did you have a conversation with them? A. Yes, well, yes. I wanted to get an ounce of heroin from them and we were sitting—I told them what I wanted, so they said that I had to wait for a while.

Q. Who had to wait? A. Ralph and Sal were sitting in there for awhile and then someone else came in, two men.

Q. Who were they? A. The fellow called Tony and another one called (172) Angelo.

Q. And did Ralph have a conversation with Tony and Angelo? A. He did.

Q. Will you state what that conversation was? A. I didn't know who they were, see, because I really didn't hear, but at the finish of it Ralph came over to me and said that I have to wait until later because he could not do it.

Q. Did he tell you what you would have to wait for? A. He told me that I would have to wait until later because he couldn't get the heroin for me at that time.

Q. And what happened then? A. So he told me he had to get off—I think it was Westchester, and he would call me later that night.

Q. And did he leave then? A. Well, we all left and went out of the luncheonette.

Q. Did you all leave in one group or did you leave separately? A. I walked out first, tried to get a cab, and the other four walked out afterwards.

(173)

Q. Did you see what they did after they walked out? A. Well, there was a car parked on Park Avenue, and they apparently got in the car, because when the cab was being pulled up to the traffic light, when the cab that I was in was being pulled up at the traffic light, then I saw that they were in the car.

Q. But you did not see them get in? A. No.

The Court: Do you see either Tony or Angelo in this courtroom?

The Witness: Only the one I know as Tony.

The Court: I say, do you see either Tony or Angelo in this courtroom?

The Witness: Yes, I see Tony.

The Court: Point Tony out.

The Witness: The man with the gray suit on.

The Court: And that is the man that you say you saw on that occasion?

The Witness: Yes, to the best of my recollection.

Mr. Londin: May the record indicate that the witness has pointed to the defendant Carminati, your Honor?

Mr. Kove: May I have that answer read, your Honor?

(174)

The Court: Yes.

(Answer read.)

Mr. Londin: May the record indicate that the witness has pointed to the defendant Anthony Carminati?

Q. Now, after you left this group of four and went out of the restaurant to go in the car, did you then hear from Ralph after that? A. Well, he told me before he left that he would call me when he would get back.

So about one o'clock I got his call and he told me to meet him at 166th Street and Broadway.

Q. And did you meet him there? A. I did.

Q. And what happened then? A. We got in the car and we drove down Broadway.

Q. In whose car? A. Ralph's car, the car that he was driving, and we struck up a little conversation.

Q. And what did Ralph say to you and you to him? A. Well, he was telling me about the trip that he was taking up in Westchester.

He said that is where the big boys live. And he said that when you are in that crowd you are (175) really living, he could have been in it but that he had blown fifty-seven thousand shortly before.

Q. What then happened? A. Well, I told him—he asked me what I wanted. I told him then that I wanted to get the two ounces that I previously told him about.

Q. Two ounces of what? A. Heroin.

Q. And did you get the two ounces of heroin from him? A. Yes.

Q. How much did you pay him? A. I gave him $1100.

• • • •

(177)

Q. Did there later come a time when you had a discussion with Ralph about cut stuff? A. Yes, there did.

Q. Will you please tell the Court and the jury when and where this conversation took place? A. That must have been around about December. I don't remember just about when.

Q. December of what year? A. 1955.

Q. What happened? A. And I called him up and told him that I wanted an ounce.

Q. Called who up? A. Called Ralph up. I told him that I wanted an ounce of heroin. And he told me to come up and meet him at the Cosmo. And I went up to the Cosmo and was sitting at the counter there, and then Sal came in, sat down, we had coffee, and then he was telling me that I would have to take seven ounces.

Q. Who is he? A. Ralph.

Q. Yes: A. That I would have to take seven ounces of heroin.

(178)

The Court: Seven or several?

The Witness: Seven. So I told him I didn't want it.

Q. He said you would have to take seven ounces of what? A. Cut heroin. I told him I didn't want it. So he told me he would see what he could do.

So he made a phone call and then after a little while this man, another fellow came in, and walked to the back of the restaurant.

Q. Who is this other fellow? A. The fellow I know as Tony. And he sat at the rear table, and we got up to the counter, got up from the counter and walked back.

Q. Who is "we"? A. Ralph, Sal and myself, and we sat at the rear table and talked. They were talking, rather, and so after a while this Tony looked at me and he said, "I am sorry, big boy, but you will have to take seven ounces of cut stuff, which is the best we can do," something to that effect.

I told him I didn't want it because it won't serve the purpose.

So we talked backward and forwards. And so (179) Ralph said, "Maybe we can borrow an ounce from somebody." I don't remember the name he used.

So he told me to meet him in a little while, about an hour or so, down at Tremont Avenue, and then——

Q. Before you go to that, did anyone else say anything at this time when Ralph or Sal said, "Why don't we try to borrow an ounce from him"? Did anyone else say anything? A. Not as I remember.

Q. Then you were told to meet Ralph an hour later? A. About an hour or so later.

Q. And did you meet him? A. I met him.

Q. Where? A. Tremont and Park.

Q. What happened? A. Well, I gave him the money and he gave me the ounce of heroin.

Q. How much did you give him? A. $600.

Q. When was the next time you met Ralph?

The Court: Are you going to ask him whether or not he knows the man Tony?

Mr. Londin: The witness has referred to the man Tony that he met before, has he not, your Honor?

(180)

The Court: I don't think so, not one bit, and I am not going to permit the jury to speculate on that.

Do you see the man who was present on that occasion and whom you described? Do you see him in the courtroom?

The Witness: The same fellow with the gray suit.

Mr. Londin: May the record indicate that the witness has referred to the defendant Anthony Carminati?

Q. Did there come a time when you again met Ralph or Sal? A. Yes, I met them several times again, I guess.

Q. When was the next time? A. I guess it was probably a week or so later.

Q. Where did you meet them and for what did you meet? A. Well, probably in John's Bar.

Q. And what did you buy? A. An ounce of heroin, $600.

Q. Now, did there come a time when you tried to get heroin without paying for it? A. Once.

Q. When did that take place? (181) A. I guess it must have been around January, I guess, or February.

Q. Of what year? A. 1955—1956 it would have been.

Q. Where did this take place? A. Well, the Cosmo Restaurant.

Q. Who was there? A. When I got up there Ralph and Sal were there.

Q. What did you say to them and what did they say to you? A. I told them that I wanted to get two ounces of heroin on consignment. So he told me—he says, "I don't know."

Q. Who told you that? A. Ralph told me.

Q. Yes? A. He says, "I don't know what I can do about it but I will see."

Q. And then what did Ralph do? A. He made a phone call.

Q. And what happened after Ralph made the phone call? A. Well, he came back inside and we had coffee and talked for a while and shortly afterwards another man came in.

(182)

Q. Who was that other man? A. The fellow I knew as Tony.

Q. Do you see Tony in court? A. The same one that I referred to before.

Q. Is that the man in the gray suit sitting in this courtroom over there (indicating)? A. That is right.

Mr. Londin: May the record indicate that the witness has referred to the defendant Anthony Carminati.

Q. Now, after Tony Carminati came in, what happened? A. He went to the back table first and sat down, and then we got up and went to the table and spoke to him.

Q. Who is "we"? A. Ralph, Sal and myself, and we had a little chat and talked back and forth to each other, you know.

Q. Did Ralph say anything? A. Well, we all was talking. He says "Tony,"—I mean they were talking.

Q. Who is "they"? A. That is Tony and Ralph were talking together, just about general things, and after a while I told them (183) what I wanted, that I wanted two ounces of heroin on consignment. So Tony looks up, and he says—he tells Ralph "That don't make sense," he says, "you will only be putting yourself in the middle."

Q. Tony said that to Ralph? A. Tony said that to Ralph.

Q. And after you said you wanted two pieces on consignment? A. That is right.

Q. What happened? A. So Ralph gets up and he says, "I am sorry. Nothing can be done. I can't go anything."

Q. And did you get the two ounces on consignment? A. No, I did not.

* * * * *

(198)

Q. On this occasion did you ask Sal for narcotics? A. Yes, I told him that I wanted some, told him that I wanted some heroin. And he told me that he had to take it easy, he had to let it cool for a while, that he had to cool it for a while, and he would see.

There was another fellow sitting there with him on his right near the window, and he says, "From now on," he says, "Rocky will have to take care of things. He will be taking care of things," because he will have to cool it.

Q. And was that Rocky with him at the time he said it? (199) A. He was sitting at the table with him.

Q. And do you see Rocky in court here? A. He is sitting at the right of the fellow with the gray suit.

Mr. Londin: May the record indicate that the witness has identified the defendant William McKenney, your Honor?

Please mark this as Government's Exhibit 4 for identification.

(Marked Government's Exhibit 4 for identification.)

Q. I show you Government's Exhibit 4 for identification. Will you examine this photograph, please, and tell me whether you have ever seen that person before? A. I may have seen him, but I don't remember.

Q. You don't remember? A. No.

Q. Now, did there come a time when agent Johnson visited you, or when in agent Johnson's presence you phoned the Russanos? A. Yes.

Q. When did this take place? A. I think this was also in August.

Q. And what time, do you recall? Which part (200) of August would it be, and what time of the day? A. The latter part of August.

Q. And about what time of the day was it, if you know? A. It was in the afternoon.

Q. And what happened? A. Well, he wanted to make another purchase.

Q. Who is "he"? A. Agent Johnson wanted to make another buy.

Q. Yes. A. So he told me to call up the Russanos again. I did.

Q. And what happened? A. And I spoke to Ralph and Ralph answered the phone. And I told him I wanted to see him. So he says, "I won't be able to make it." And he told me how the transaction would have to be carried out. He said he would send Rocky. So at the time something happened and the deal didn't go through. The agents could not see him or could not get him, something like that. So anyway I went up to meet Rocky at 176th Street and Broadway.

Q. And during the course of this conversation did you say anything yourself to Ralph Russano? Do you recall anything else that was said in the conversa- (201) tion? A. I don't remember.

Q. You then went up to meet Rocky, is that it? A. Yes.

Q. What happened? A. Well, I told him that——

The Court: Pardon me. Where did you meet him?

The Witness: I think it was at 176th Street and Broadway or 175th Street. I went up to meet Rocky and I told him that my friend, that they had bought some other stuff from somebody else and got his money all tied up, and would have to wait until the next day or so.

Q. Did Rocky say anything to you before this when you met Rocky up at 176th Street or 175th Street and Broadway? A. That is about all we just said.

Mr. Fusco: I am sorry but I don't hear him.

The Witness: We just greeted each other. That is about all that I remember.

Q. Did Rocky say what he was meeting you for?

Mr. Kove: I object to that as leading and suggestive.

The Court: Yes, please don't lead.

Mr. Londin: I am sorry, your Honor.

(202)

The Court: Did you tell the entire conversation?

The Witness: Well, that is about all of it I mean, and I was given to understand——

The Court: No, not what you were given to understand. What was said either by you or by Rocky on that occasion?

The Witness: That is about all that I remember.

Q. Had you ever met Rocky on any occasion other than the times you have referred to? A. Not that I remember.

The Court: You did not meet Rocky the next day then, did you?

The Witness: No.

The Court: You say you did meet him as a result of your telephone conversations with Ralph?

The Witness: Yes.

The Court: And Ralph said that he was not in a position to carry through the transaction but Rocky would be there?

David Ogelsby—for Government—By the Court

The Witness: Yes, sir.

The Court: And you did meet him as arranged?

The Witness: I did.

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DAVID OGELSBY—for Government—Cross

(205)

Q. Mr. Oglesby, on your direct testimony this morning you pointed at the gentleman sitting there with the gray suit and you testified that the man you spoke to on that first time and who was introduced to you as Little Tony resembled this man, is that correct? A. Yes.

Q. And is that still your testimony? A. That is right.

Q. And is it your testimony that on all the other occasions when you say you met him that it was this man who resembled the man you met? A. That is right.

Q. Did you see the same man on all occasions? A. On the ones that I mentioned that he was involved in, yes.

Q. The same man? A. Yes.

Q. Now, when you said this man resembled him, is that because you are not quite sure that it was the same man? A. Well, according to my memory it is the best I can say was that he looks like him, looks exactly (206) like him.

Q. Looks like him?

The Court: Looks exactly like him, he said.

Mr. Kove: Yes.

Q. Are you sure that this is the man that you saw on those occasions? A. As far as I know, yes.

Q. There is no doubt in your mind about that, is that right? A. That is right.

• • • •

(211)

Q. The charge is still pending? A. Yes.

Q. You pleaded not guilty to that charge? A. No.

Q. What did you plead? A. Guilty.

Q. What did you plead guilty to? A. Possession of narcotics.

Q. And when did you plead guilty to that charge? A. I think it was in July.

Q. July of this year? A. Yes.

Q. Is that correct? A. Yes.

Q. Were you sentenced after you pleaded guilty? A. No, I was not sentenced.

Q. You have not as yet been sentenced? A. No, it is still pending.

Q. And was it after that that you met Agents Johnson, Dugan and Cox? A. Yes.

Q. Is that right? A. That is correct.

Q. Now, when you first met these gentlemen, (212) where was it? A. Where was it?

Q. Yes. A. At my house.

Q. At your house? A. Yes.

Q. Where is that? A. Up at——

Mr. Londin: If your Honor please, I believe the witness has a natural reluctance to discuss the place where his family lives.

Mr. Kove: I don't doubt that he has a natural reluctance, but at the same time——

Mr. Londin: I am sorry, withdrawn. I am just wondering whether it is relevant to the cross-examination.

The Court: Well, unless I question the witness myself, and I will do it in the absence of the jury.

Mr. Kove: I think I know what Mr. Londin has in mind, your Honor.

Mr. Londin: I will withdraw my remarks, your Honor, because I have nothing in particular in mind.

The Court: It does not make any difference (213) where his house is located, does it?

Mr. Kove: No, except I want to establish another fact.

The Court: I will excuse the jury and I will question the witness and do it in the presence of all counsel.

All right, the jury may be excused.

(The jury retired from the courtroom and the following proceedings were had in the absence of the jury.)

Mr. Londin: If your Honor please, I have been advised by Mr. Lankenau that at the time I believe Mr. Kove is referring to that the defendant, or the witness rather, the witness Oglesby lived in some other house than his current one, and if the questioning is restricted to that specific period, of course, the Government has no objection to that but only if we go further into the matter.

Mr. Kove: Where he lives at this moment, and I am not concerned about his family, your Honor, because——

The Court: Then it is resolved, isn't it?

Mr. Kove: I am not concerned about his family, your Honor.

(214)

The Court: Well, the Court would be concerned with the prospect or the possibility of injury to his family, and that I am concerned about.

Mr. Kove: I mean I am not concerned, so far as the questions are concerned, I am not interested in knowing——

The Court: The only reason I excused the jury is to find out whether or not this man had any fear if he gave the information, whether he had any fear of harm or injury which may come to members of his family.

Mr. Kove: All I am intending to convey to your Honor is that the purpose of the questioning was not to determine their present whereabouts, that is, the whereabouts of his family, because I am not at all concerned about that.

The Court: Under that circumstance we will allow the question with respect to where he met the agents and, as I understand it, he no longer lives at that address, so there will be no purpose of withholding the information.

Mr. Kove: Very frankly, I wanted to establish the fact that he was not in any prison.

(The jury returned to the courtroom and (215) the proceedings were resumed within the hearing of the jury as follows:)

The Court: All right, proceed. You may answer.

The Witness: 106th Street and West End Avenue.

By Mr. Kove:

Q. And when was that? A. Probably around in June when I first met them.

Q. Was this after you had pleaded guilty to the possession of narcotics in General Sessions? A. I had not pleaded guilty at that time.

David Ogelsby—for Government—Cross

The Court: You had not?

The Witness: I had not pleaded guilty.

Q. Well, had you already been arraigned at that time? A. Yes.

Q. And you had pleaded not guilty at that time? A. I hadn't pleaded at all.

Q. Well, had you been arraigned? A. I had been arraigned.

Q. And after you were arrested weren't you brought into the courtroom? A. I was out on bail.

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MICHAEL BOTTO—for Government—Direct

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(285)

Q. Ralph said he would supply you himself? A. Yes.

Q. And what did he say he would charge you? A. $300 an ounce.

Q. And what was he going to sell you? A. He was supposed to sell me pure.

Q. Pure what? A. Pure heroin.

Q. And did he supply you with pure heroin? A. Yes, sir.

(286)

Q. About how much did you buy from him? A. About an ounce or two a week.

Q. During what period did you buy the ounce or two a week from him after you went on your own? A. Well, from around June, 1955, to around June, 1956.

Q. During this period did you ever discuss the quality

of narcotics with Ralph? A. Well, I asked him what kind of stuff it was. He told me it was pure.

Q. Did you have cause to complain that it was not? A. I did.

Q. When was this? A. Some time around September or October I told him that the stuff was getting bad; that I was getting complaints on the stuff.

And he had told me that if I want to pay a little more money he would get me better stuff.

I told him I was willing to pay the extra money.

Q. Well, how much more did he want? A. He told me he had a connection for $400.

Q. $400 for pure? A. For an ounce of pure.

Q. Did he say who the connection was? (287) A. I asked him who the connection was.

He told me it was Black Mike.

Mr. Fusco: If your Honor pleases, I object to that as certainly not being in furtherance of any conspiracy charged here, and I object to it on the further ground that it is purely hearsay.

Mr. Londin: If your Honor please, the Government contends it is completely relevant and in furtherance of the conspiracy and offers it subject to connection.

The Court: It will be received subject to connection.

Mr. Fusco: We are thus being deprived of the right of cross-examination.

The Court: No, you will have your right to full cross-examination.

Mr. Fusco: Thank you.

Q. Did you ever meet Black Mike? A. Yes, sir.

Q. Did you learn his true name? A. No, sir.

Q. Do you see Black Mike here in court? A. The second on the left.

Mr. Londin: May the record indicate that (288) the witness has identified the defendant Galgano.

The Court: That is Michael Galgano?

Mr. Londin: That is correct.

The Court: When did you meet the man you now identify as Black Mike for the first time?

The Witness: I met him around July or August of '55—1955.

Mr. Fusco: Now, if your Honor pleases, may I ask you to urge this witness to kindly raise his voice and not have this going on in such a secretive way? Will you please ask him to raise his voice so we can all hear it?

The Court: You may move up.

Mr. Fusco: I have one difficulty here as I am looking at him through a corner of the courtroom to begin with.

The Court: Well, move right up to the front here and in that way you can look directly at him.

Mr. Fusco: Thank you.

Q. When did you first meet Mike Galgano?

Mr. Fusco: Hold up will you, please, a moment, and let me be seated, counselor?

Mr. Londin: I am sorry.

A. Some time in the summer of 1955.

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(297)

Q. Just a moment. Whom did Rich meet on the occasion of the next day when you went to the Russano home?

The Witness: He met Pat Russano.

The Court: Pat Russano?

The Witness: Pat Russano and Ralph Russano.

The Court: All right.

Q. Did Rich ever go to Russano's home again with you at any time? A. Yes, sir.

Q. About when did this happen or how frequently? A. Well, it happened occasionally—not occasionally; it happened a lot of times after he was my partner that we went up there together.

Q. For what purpose? A. To buy heroin.

Q. And did you buy heroin on each occasion? (298) A. Every time we went up we did, yes.

* * * *

(316)

Q. What did Shackelford say to you? A. He said that it was his car.

He called me up and he told me that Rich had taken his car and had got into an accident up in the (317) Bronx, and that Rich had told him to report the car stolen.

He said to me, "What should I do?"

I said, "If Rich told you to report the car stolen, report it stolen."

Q. Did you ever talk to Rich about this affair? A. The same night I got a phone call from Frank Rich.

Q. This was when? A. The same night of the accident.

Q. What month, and what year? A. In August, 1956.

Q. Yes? A. He told me that the Federal—that the narcotic agents chased him, and he backed the car up and he had got away.

Q. What do you mean "he backed the car up"? A. Well, the narcotic agents had stopped in front of him, pulled in front of him, and he backed the car up to get away from them, and in doing so he crashed up against a pillar—he backed into an el pillar.

Q. Where is this, did he say? A. Around 177th Street and Third Avenue, some place around there.

(318)

Q. Did Rich tell you what he had been doing at the time of the accident? A. Well, he had told me that he went up to get an ounce of heroin for Donald Bauer.

Q. From Donald Bauer? A. For Donald Bauer, and he thought that he was being set up.

Q. Did he in fact get this heroin for Donald Bauer? A. Yes, he told me that he got it from Ralph Russano.

Q. How much did he get? A. He told me that—he told me how he got an ounce and paid Ralph Russano a hundred dollars.

Q. Did he tell you whether anyone was with him? A. Yes, he told me that a fellow named Joe was with him, and that while he backed the car up getting away from the agents, that this other fellow had passed out in the car, and so he had to leave him in the car, but he did get away and he threw the stuff away and got away himself.

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(333)

By Mr. Londin:

Q. After you made bail and left West Street did you have a conversation with Michael Galgano? A. Yes, sir.

Mr. Kove: I suppose now would be the proper time to object to this testimony, your Honor.

The Court: I do not know the nature of the conversation as yet.

Mr. Kove: Well, your Honor, he said or asked in the question after he had made bail, and certainly that is after the arrest.

The Court: Yes.

This is being received at this point only with respect to the defendant Michael Galgano.

(334)

Mr. Fusco: May I object to that, your Honor?

The Court: And I am instructing the jury that it is not to be considered and it is not to be received with respect to any other defendant.

Mr. Fusco: On behalf of Michael Galgano I object, if your Honor pleases.

The Court: Overruled.

Mr. Fusco: Exception.

Q. Can you give us the approximate date of this meeting? A. October 15th or 16th. I think it was the 16th.

Q. And where did this conversation take place? A. The Delmont Bar.

Q. Where is the Delmont Bar? A. Around 180th Street and Third—Hughes Avenue, some place around there.

Q. Do you see here in court the man with whom you had this conversation? A. The second one from the left.

Mr. Londin: May the record indicate that the witness has identified the defendant Michael Galgano?

Q. And did you discuss narcotics with Galgano? A. I did.

(335)

Q. What did you say to Galgano and what did he say to you about narcotics? A. I told him that I was paying $400 an ounce for the stuff that he was giving to Ralph.

Mr. Fusco: That is objected to.

Q. Exactly what did you say to him, sticking as carefully as you can to the language of the conversation. A. I told him I was buying narcotics from Ralph and paying $400 an ounce, and that Ralph had told me "He was getting it from you."

He told me that when he gave the stuff to Ralph the stuff was all right.

The Court: Now, members of the jury, I am emphasizing that this testimony is being received only as against the defendant Galgano; it is not being received as against any other defendant on trial, and you are not to consider it as being against any other defendant.

Q. Did you meet anyone else at this time? A. Yes, I was introduced to Tony Carminati at that time.

Q. Did you see him in court now? A. The fellow on the end.

(336)

Mr. Londin: May the record indicate that the witness has identified the defendant Anthony Carminati.

The Court: What date is this?

Mr. Londin: October 16th I think it was, your Honor.

(337)

Mr. Kove: That is objected to, your Honor, on the ground that as far as the indictment is concerned it is subsequent to the arrest, the conspiracy having already come to an end.

The Court: It will be received at this time as against the defendant Carminati only, and not as against any other defendant.

Q. Now, you met Carminati on the same day that you spoke to Galgano? A. That is right.

Mr. Kove: What was that date again?

Q. What was this date? A. The day after I got out. I believe it must have been the 16th of October.

Q. And how soon after meeting or talking to Galgano did you meet Carminati? A. About 15 minutes later, half an hour later.

Q. And did you go over yourself? A. No, Black Mike brought me over there.

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(339)

Q. Thereafter did you meet William McKenney? A. Yes, sir.

Q. When was that? A. I met him right outside the courtroom.

Q. When? A. It was on October 18th.

Q. Which court? A. Outside of Room 318.

Q. In this building? A. Yes, sir.

Q. Was anyone with you? A. Agent Giorgio.

Mr. Fusco: Agent who?

The Witness: Agent Giorgio.

Q. And who was with McKenney? A. Pat Russano and a few other people. I suppose they were relatives, all friends I mean; (340) Pat Russano, William McKenney, and there were a few other people there.

Q. And did you introduce Agent Giorgio to them? A. Yes, sir.

Q. How did you make the introduction? What did you say? A. I introduced him as Steve, my friend Steve from Jersey.

Q. Did you have a conversation then? A. Yes, we did have a conversation.

Q. Who participated in the conversation? A. McKenney, Pat Russano, Agent Giorgio and myself.

Q. What was said?

Mr. Fruchtman: Now, if your Honor please, I object to this conversation as being subsequent to the arrest of the defendant McKenney, and after the conspiracy terminated, which was terminated at the time of the arrest.

The Court: It willabe received at this point only as against the defendant McKenney.

Mr. Fruchtman: I respectfully except.

The Court: And not as against any other (341) defendant.

Mr. Fruchtman: I respectfully except.

Q. Who participated in the conversation? A. McKenney, Pat Russano, Agent Giorgio and myself.

Q. What was the conversation? A. Well, Pat had asked me if I needed any stuff.

And I told her I did.

She told me to meet her at 10 o'clock that night, that she would arrange to have a connection for me.

Q. Where did she tell you to meet her? A. 180th Street, up her house, 180th Street and Arthur Avenue.

Q. And did you meet her? A. Well, it was about 8 o'clock, and Agent Giorgio and myself, we went into the bar to have a few drinks.

Q. What bar? A. The Delmont Bar, 180th Street and Hughes Avenue.

Q. Did you meet Pat Russano? A. Pat Russano had come in about 9 o'clock with William McKenney.

(342)

So he had come over to the bar with her and we drank. We all had a drink together.

And she told me that she had met Sonny Della Universita that night at 9 o'clock on the corner, so if I had wanted any stuff for this Giorgio, she would be right on hand to take care of me.

Q. What happened then? A. So I asked Agent Giorgio if he wanted to buy any stuff.

And he said no.

Q. Did anyone come in? A. Then as we were drinking there with Giorgio, Ambrosini came in. He had came

over to us and he started talking to us and wanted to know if we wanted anything.

We told him, "No, we didn't want nothing."

Q. And what happened after that?

Mr. Fruchtman: I move to strike out all that testimony, if your Honor pleases.

The Court: McKenney was present on both occasions, was he?

The Witness: Yes.

Mr. Fruchtman: He did not participate.

The Court: I am receiving it only as against (343) McKenney.

Mr. Fruchtman: As against McKenney or as against Russano?

The Court: McKenney.

Mr. Fruchtman: McKenney was merely present, your Honor, and he did not participate in the conversation.

I respectfully except.

Q. What happened after that? Did you say anything to Pat Russano or McKenney? A. Well, we told him——

Q. Who is "we"? A. Agent Giorgio and myself.

Q. Did you both talk? A. Well, I said,—I said we didn't want to buy no stuff that night, that I would give her a call and let her know when I wanted something.

Q. What happened after that? A. Pat Russano and McKinney had left the bar and we stood in there and finished our drinks, and about 10 or 15 minutes later Agent Giorgio and myself left the bar.

As we are walking towards 180th Street and Third Avenue, we passed an Italian Restaurant there (344) and William McKenney was standing outside the restaurant.

I asked him, "What are you doing here?"

He said, "We are having a pie inside."

Mr. Kove: I am sorry, but I don't hear that.

Q. Would you repeat that, please, Mr. Botto? A. As we were walking towards 180th Street and Third Avenue we passed an Italian restaurant, and outside William McKenney was standing.

I asked him, "What are you doing here?"

He said, "I am having a pie."

So then he asked Giorgio and I to go in and have a pie with him.

So we went in there.

There was Sonny Della Universita, Pat Russano, William McKenney, Agent Giorgio and myself in there.

Q. Did McKenney say anything? A. Well, we were in there about five minutes and Sonny Della Universita and Pat left.

So McKenney told me he had come up to pick up an ounce of pure, that he didn't have enough money and they wouldn't sell it to him. He said he only (345) had $200, and they wouldn't sell it to him.

Q. Who told you that? A. McKenney.

Q. Do you see McKenney in the courtroom here? A. The second one on the right.

Mr. Londin: May the record indicate that the witness has identified the defendant William McKenney?

Your Honor, may I have a moment?

The Court: Yes.

Mr. Londin: Your Honor, may we have one more brief conference with counsel?

The Court: At the bench here?

Mr. Londin: Yes, sir, before you, your Honor.

(Discussion between Court and counsel at bench, without the hearing of the jury.)

The Court: I am sorry, members of the jury, but you will have to wait again.

(The following proceedings took place in the robing room.)

Mr. Lankenau: Your Honor, this witness has testified to a conversation that he had with Galgano on October 16 up at the Bronx, and in some part of (346) the same conversation he told Galgano that Sal Russano was complaining that no one had gotten him out on bail which he had been promised.

The Court: Yes.

Mr. Lankenau: And further, that Galgano asked him if he thought that Sal Russano would talk if he was not released on bail.

Galgano subsequently said that he was not sure what he could do about this.

Then later on when Galgano introduced him to Carminati, Galgano and Carminati had some discussion, some further discussion about getting Sal Russano out on bail, that Sal Russano might talk if they did not get him out on bail.

The Government will prove that Galgano subsequently went to a bondsman and began to make some of the arrangements for the release of Sal Russano on bail.

Subsequently Sal Russano was released on bail, but not on a bond that Galgano had signed, but on a bond signed by a third person, a relative of Sal Russano.

These conversations or the first one with Galgano would be offered just as against Galgano (347) and,

of course, the conversation subsequently in which Galgano and Carminati both participated, would be offered as against both.

The Court: What is the theory on which you offer it as against Galgano?

Mr. Lankenau: The theory is simply that this shows his intent, his consciousness, and the fact that he had an interest in getting Sal Russano out, because he was afraid that this man would talk.

Mr. Londin: And there is, of course, the express statements of both Carminati and Galgano that they were fearful that he would talk.

The Court: No, I think that you have gotten up to this point, of course, a substantial number of statements involving the conspiracy count, and I am not going to allow you to go further. Accordingly, we will exclude it.

Mr. Londin: Thank you, sir.

(At this point the conference between the Court and counsel in the robing room terminated and the following proceedings took place in open court.)

Mr. Londin: No further questions, your Honor.

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MICHAEL BOTTO—for Government—Cross

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(491)

The Court: Now, do you remember testifying yesterday that you had a conversation with Galgano in October of 1956?

The Witness: Yes.

The Court: Following your release on bail?

The Witness: Yes, sir.

The Court: And do you remember where that was?

The Witness: At the Delmont Bar.

The Court: Now, before I put any further questions, may I say this to the jury:

The Judge has a function under that ruling upon objections and preserving order during the course of the trial. One of his functions is to keep the issues within scope and ask questions in order to clarify matters that you may be called upon to decide.

Now, the fact that I ask questions is no indication that I have any point of view as to either the witness's credibility or as to how the case is to be (492) decided, nor do I entertain any opinion at all with respect to the subject matter. My asking the questions is simply to clarify the issues that are in the case.

You testified, did you not, that you saw Mr. Galgano at the Delmont Bar?

The Witness: Yes, sir.

The Court: That was in October 1956?

The Witness: Yes, sir.

The Court: Did you have any conversation with him on that occasion?

The Witness: Yes, sir.

The Court: Now, what was the conversation you had with him?

The Witness: Well, I had told him that I had just come out on bail and I had seen Ralph Russano down there and all the fellows that were in on this case——

Michael Botto—for Government—By the Court

Mr. Kove: If your Honor pleases, may I on behalf of the defendant Anthony Carminati respectfully object to this testimony as being conversation testimony coming after the date of the arrest.

The Court: This testimony, I will emphasize again as I did yesterday when the witness testified to it on direct examination, members of the jury, (493) is being received only with respect to the defendant Galgano who is the defendant with whom the witness alleges he had the conversation. In no single respect may it be considered insofar as any other defendant in the case is concerned.

All right.

The Witness: Well, I had met him in the trial and I told him that I just come out on bail and I saw all these people down there, and there was talk about Ralph, about the stuff being very bad, and Ralph told me he had got the stuff from Galgano, and I asked him why the stuff was bad.

Well, he said, when Ralph had got it the stuff was good, he didn't know what Ralph had done with it.

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(494)

By Mr. Fusco:

Q. Now, Mr. Botto, so that now you say, before we get to this October 1956 time, you say that you spoke to Michael Galgano, you say that there was another time in the winter of 1955 when you spoke to Michael Galgano, is that true? A. Well, we had a drink together.

Q. And where was this? A. The Delmont Bar.

Q. You just had a drink; is that right? A. That is right.

Q. And no conversations were had, is that right? A. We were talking about general things, but that was all.

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(511)

Q. Where were you living on October 16, 1956?

Mr. Londin: Objection, your Honor, immaterial.

The Court: Overruled.

Mr. Londin: If your Honor please, may we approach the bench on this question?

The Court: All right, come up.

(Discussion between Court and counsel at the bench off the record and out of the hearing of the jury.)

The Court: Members of the jury, please remain in the box. I won't be any longer than a few minutes. Bring the witness in, too.

(The following proceedings took place in the robing room.)

The Court: Is there any reason for your hesitancy in answering any question as to where you lived in October 1956?

The Witness: I don't want certain people to know where I live.

The Court: Why don't you want certain people to know where you live?

(512)

The Witness: Well, I don't know. They might go up there and try to intimidate me.

The Court: Are you afraid that they will?

The Witness: Well, I am not afraid, no, but I just don't like to give my address—

The Court: You are afraid?

The Witness: So that certain people will know where I live.

The Court: What was the statement that you made at the side bar before, Mr. Lankenau?

Mr. Lankenau: Your Honor, I stated that a witness in this case was approached and he was offered a bribe, and we feel that there is some danger of intimidation, and we feel for the safety of this man and his common-law wife and, therefore, unless there is some showing of materiality we ask that that objection be sustained.

The Court: Mr. Fusco, what is the materiality as to where he lived in October 1956?

Mr. Fusco: If your Honor pleases——

The Court: As long as you asked the question as to whether or not he made the call from the street or from his home.

Mr. Fusco: To show a motive here, if your (513) Honor pleases.

The Court: A motive for what?

Mr. Fusco: His going there.

The Court: Going where?

Mr. Fusco: To the Delmont, his purpose of mind.

The Court: What has that got to do with where he lived? Explain to me the materiality of it, that is, precisely as to this one question as to where he lived then.

Mr. Fusco: Well, I think that it fitted into the picture here to show the motive as to why he went to the Delmont Restaurant. That is the purpose of my asking the question, and where he got back to his home and made a definite phone call to the narcotic agents, and to show that that was the purpose why he went to the Delmont to obtain certain information on a person who was not yet arrested, and so that he would have a weapon in his hands on someone who had not been arrested as yet. That is the reason.

The Court: The Court is of the opinion that counsel has not in the slightest degree shown the materiality of the question put to the witness as to where he lived in October 1956, the day the witness states (514) he went to the Delmont Restaurant. Further, the Court is of the view that there is subtance made by the prosecution of possible harm or injury to the witness. Accordingly, the objection to the question is sustained.

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STEPHEN GIORGIO—for Government—Direct

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(536)

Q. Will you tell this Court and jury what happened on October 18, 1956, in the morning? A. On the morning of October 18, 1956, I accompanied Michael Botto to the Federal Courthouse where his trial was supposed to have been held that morning.

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(538)

Q. Did McKenney take any part in the conversation? A. After several minutes conversation, general conversation, he joined the group.

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He directed a question to her and he asked his aunt if Uncle Tony still has the stuff there.

(539)

And she replied that she didn't know for certain, but he rather insisted that the stuff must still be there.

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THOMAS DUGAN—for Government—Direct

(591)

Q. Were you engaged in the conduct of your official duties on August 22, 1956? A. I was.

Q. Will you tell us what you saw on that day? A. On August 22, 1956, Agent Cox and I were on surveillance in the vicinity of the Delmont Bar.

Q. Where is that located? A. That is at 180th Street and Hughes Avenue.

Q. At what time of the day was this? A. We started about three o'clock in the afternoon, and we observed Ralph Russano seated in a 1950 green Buick which was parked in front of the Delmont. His father, Salvatore Russano, was outside the car, and at times he would come over to the car and converse with Ralph.

At about 5 P. M., I observed a 1954 Oldsmobile convertible drive up and double park at the side of the Delmont Bar. The license plate on this car was XB4559, which is registered to Anthony Carminati of 2420 Camberling Avenue, in the Bronx.

I observed Anthony Carminati get out of the car and motion to Ralph Russano.

(592)

Ralph Russano walked over to him and the two men had a conversation which lasted about three minutes.

Q. Do you see the man that got out of that 1954 Oldsmobile here in Court today? A. Yes, I do.

Q. Will you step down and point him out please? A. He is the man that—the fifth man to my left seated.

Mr. Lankenau: May the record indicate that the witness identified Anthony Carminati?

Q. Where did this conversation between Ralph Russano and Anthony Carminati take place? A. It took place in the—partially in the street—the two men started to talk, and then they stepped over between the two parked cars, and they went up on the sidewalk.

It was all within the immediate area of say twenty feet from where they started.

Q. About how long did that take? A. Approximately ten minutes.

Q. Then what happened? A. Then Anthony Carminati got back in his car and drove off out of my view.

Shortly after that Ralph and Salvatore (593) Russano got into the 1950 Buick and drove to 180th Street and Crotona Avenue, where they parked the car and Salvatore Russano got out of the car and entered the building at 826 East 180th Street.

Thomas Dugan—for Government—Direct

The Court: What address?
The Witness: 826 East 180th Street.

He was in the building for approximately two or three minutes.

He came out of the building and re-entered the car and the car drove off in—drove west on 179th Street. At this point we were following—the car was traveling at a rate of speed of approximately fifteen miles an hour and we decided that we would pull off on 180th Street and try to pick up the car on the next block.

The next time I saw the car was on La Fontana Avenue between 179th and 180th Street, and just as we got there—apparently as we got there——

Q. What did you see? A. Yes.

Q. Just what you saw? A. As we got there, the 1949 Nash was pulling to a stop, was double parked in the middle of the street. (594) At this point, I saw Frank Rich emerge from a 1955 Ford with N. J. license plate JDV13.

This car is registered to David Shackleford of 776 Hunterdon Street in Newark.

Q. Do you see the man that got out of the 1955 Ford car here in Court today? A. Yes, I do.

Q. Will you please point him out? A. He is the man seated over there (indicating).

Mr. Lankenau: May the record indicate that the witness has identified Frank Rich?

Q. Then what happened? A. Then Rich walked over to the door of the 1949 Nash and he leaned on the door frame and had his head and the upper part of his body in the car.

After a minute or so, he left the Nash, walked over to the 1955 Ford and both cars drove off, the 1950 Buick drove off out of my view down La Fontana Avenue.

We followed the 1955 Ford which Rich and another man we later identified as Joseph Celso was seated in; the car drove to 178th Street and Third (595) Avenue where it was stopped for a red light.

At this point, I pulled the Government car in front of their car, blocking their way on Third Avenue.

Agent Cox got out of the car with his gun and badge in hand and I got out of the car on the driver's side, and as we got out of the car——

Q. Did either of you say anything? A. Pardon?

Q. Did either of you say anything? A. Yes, we identified ourselves. We said "Stop, we are Federal Agents," and held out our badges.

Q. Then what happened? A. Then Frank Rich put the car in reverse and sped backwards down Third Avenue, I guess about forty or fifty miles an hour.

I ran down Third Avenue after him shouting to halt and I fired two warning shots in the air.

After the shots were fired, the car smashed into an El pillar which was on the other side of Third Avenue evidently—on the opposite side of Third Avenue from the distance that they were going in.

(596)

As I ran up to the car, Frank Rich jumped out of the car and continued running north on Third Avenue.

As I passed the car, I noticed Joseph Celso unconscious as a result of the crash.

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(650)

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The Court: Which two cars?

The Witness: Between the 1955 Ford and the 1949 Nash.

The Court: Then the Russanos were in the Nash (651) car?

The Witness: This is on August—oh, excuse me, I am sorry. I made a mistake. They were in the 1950 Buick, excuse me.

The Court: That was the question I asked you this morning, and my impression was that this morning you testified that on August 22, when the car double parked, that the Ford car came along side of it and it was a Nash car, and that the Russanos were in this car. Now, is it your present testimony that it was a Buick car the Russanos were in?

The Witness: No, it was a 1950 Buick, and if I stated that it was a Nash this morning I was in error.

The Court: That is what I want to know. If you did state it was a Nash you were in error?

The Witness: Yes.

The Court: I did raise that point and there was some issue about it. However, you say now you mean that it was a Buick car?

The Witness: Yes.

The Court: That the Russanos were in?

The Witness: Yes.

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Thomas Dugan—for Government—Cross

(678)

Q. Now, Officer Dugan, when you arrested Michael Galgano were you alone? A. No, I was not.

. . . . .

Q. And did you have a warrant? A. Yes.

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ANTHONY JOHNSON—for Government—Direct

(896)

. . . . .

Q. Agent Johnson, I show you Government Exhibit No. 7 for identification and ask you if you have ever seen that before? A. Yes, sir, I have.

Q. What is it and when did you see it?

Mr. Fusco: If your Honor pleases, I object.

Mr. Kove: I object to that.

Mr. Fusco: I have an objection, your Honor. There is no question about the exhibit being offered in evidence, which is one thing, but I think that we should be permitted to see the exhibits. There is no question as to the exhibit being marked for identification, but in view of the fact that the exhibits are only marked for identification, any such questions are premature, as I understand it, questions of the type which are now being asked by the Assistant United States Attorney.

The Court: He may state the circumstances and then I will decide upon it if an offer is made.

Q. When did you first see this? (897) A. August 20, 1956, sir, in the automobile, the Nash automobile of the Russanos, sir, in front of 787 Clinton Avenue in the Bronx, Tremont Street, in the Bronx. That is the envelope that I took from underneath the cushion in the automobile.

Q. How do you make that identification, Agent Johnson? A. By my initials and the time which are affixed beneath my initials, sir, on the rear of the envelope.

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(898)

The Court: Well, look at them. Are you able to state based on your own knowledge whether those two envelopes were contained in what you have referred to as Government Exhibit 7 for identification?

The Witness: Yes, sir.

Q. Agent Johnson, what did you then do with Government Exhibit 7 for identification? You say this was the package that you received? A. Yes, sir.

Q. In the car parked across the street? A. Yes, sir.

Q. What did you then do with it? A. I then returned to rejoin Agents Dugan and Cox, and the evidence or the envelope which I had taken from beneath the seats was given to Agent Cox, whereupon I initialed it and put a note of the time, sir.

Q. Was Government Exhibit 7 for identification opened at that time? A. No, sir.

Q. When was it opened? A. The following day, sir.

Q. And who had custody of it at that time? A. Agent Cox, sir.

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Anthony Johnson—for Government—Direct

(900)

Q. Will you describe what you saw in the package?

Mr. Fruchtman: I still object to it, if your Honor pleases.

The Court: Overruled.

Mr. Fruchtman: I respectfully except.

A. It was a white powder, sir.

Q. Who retained custody of Government Exhibit 7 for identification thereafter? A. Agent Cox, sir.

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ABRAHAM SCHWARTZ—for Government—Direct

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(917)

Q. And what did he say? A. He always said the same thing, "When you're ready, when you need it come down and talk to us."

Q. Do you recall an occasion when you met or saw Freddy or Vickey? A. Yes.

Q. As best you recall when did you first see them? A. The first or second time that we went down to see Mike and Ritchie.

Q. And whom were they with? A. With Ritchie.

Q. Do you recall an evening when Johnnie Sierra met Freddy or Vickey? A. Yes.

Q. When was that and where was it? A. It was about the third week—the second—the third week in June around.

Q. Of what year? A. 1956.

Q. And where was that? A. Around 51st Street and Eighth Avenue.

Q. Now, would you tell us what happened that evening?

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(921)

Mr. Sweeney: Now, I object, if your Honor pleases.

The Court: Please do not lead any more.

Does that exhaust your recollection as to what was said that evening?

The Witness: Well, he introduced us to Freddy and Vickey and he told us, "Well, I have been selling them stuff for about nine months and we are going out of business so I'll give you the customer."

Q. Was there anything else that you recall about that conversation with Ritchie that night? Will you answer orally? A. No.

Q. When did you next see Ritchie? A. The following day.

Q. Where did you see him? A. On Central Park South in the 70s or 80s. I don't remember.

Q. And who was present? A. Johnnie, myself, Ritchie, and some other fellow I don't know.

Q. Will you tell us what happened that day? A. Ritchie brought us a whole ounce and told us that we would have to split it up with the other (922) fellow.

Q. Then what happened? A. So I took the stuff and Ritchie left and the three of us, Johnnie, myself and this other fellow, we went to—well, I went to Johnnie's house and they went to Riverside Drive and waited for me to cut the package in half and bring this other fellow his half.

Q. Will you describe the package that you received and its contents? A. It was just a glassine envelope in a bank bag.

Q. And what did the contents of the glassine bag look like? A. Well, it was powder; it was heroin.

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(925)

Q. Did you have a conversation with Ritchie? A. Yes.

Q. What did you say to him and what did he say to you? A. Well, we told him we needed more stuff.

Q. And what did he say? A. He said, all right, that he would meet us the following day and give it to us.

Q. Was there any other conversation at that time? A. Well, we asked him for a whole ounce this time.

Q. And how much were you to pay for that? A. $400.

Q. Was there any other conversation? A. I don't remember.

Q. Do you recall whether there was any mention of a place to meet him? A. Yes.

Q. Where was that? A. On 180th Street and Broadway.

Q. And what happened? A. We went up to meet him then the next day.

Q. Do you know what day that was? (926) A. Yes, it was Friday, the 29th of June.

The Court: What year, please?

The Witness: 1956.

Q. How do you recall that date?

Mr. Fruchtman: I am sorry but I did not hear the date.

Mr. Lankenau: June 29, 1956.

Q. How do you recall that date? A. That evening I got arrested.

Q. Where did you see Ritchie on June 29th? A. 180th Street and Broadway on the corner.

Q. Who was present? A. Johnnie, myself, and Ritchie.

Q. What happened? A. We went into a bar, had a drink, and I took a package from Ritchie and gave him some money.

Q. Do you recall how much money you gave him? A. A couple of hundred dollars.

Q. Did you owe him any money after you had paid him that $200? A. About $300.

Q. Will you please describe the package you received from Ritchie? A. It was just a glassine envelope with powder (927) in it and in a bank envelope.

Q. Then what happened? A. I took the package and left and went down to Johnnie's house and waited for Johnnie to show up.

Q. Who had the package? A. I did.

Q. What did you do with the package? A. I hid it in a spot in the kitchen, sort of like a hole in the wall.

Q. What happened then? A. Johnnie came back and we made up a few more packages.

Q. What do you mean by "made up"? A. We used to take a little bit at a time. We did not make up a whole thing at once.

Q. What do you mean "make up"? A. We had to cut it.

Q. What does that mean? A. We had to cut the heroin and we had to mix it.

Q. What did you mix it with? A. Milk sugar.

Q. And what happened? A. Well, then, we didn't do anything until that evening.

(928)

Q. What happened that evening? A. That evening we went out to meet Freddy and Vickey.

Q. Where did you meet Freddy and Vickey? A. On Columbus Circle.

Q. Who was present? A. Johnnie, myself and Freddie.

Q. Was Vickey present? A. No.

Q. Then what happened? A. Gave the package to Freddie and we walked down the block. We walked down Central Park South with it to Sixth or Seventh Avenue, I don't remember, and that is when we got arrested.

Q. Then what happened? A. Well, they took us to Johnnie's house and they found the other package that was just picked up that morning, and they took us down to the station house and booked us there.

Q. You say you gave them a package. Now, what package was that? A. The package that I had picked up earlier that day.

The Court: Picked up from whom?

(929)

The Witness: From Ritchie.

Q. And to whom was that given if you know? A. I don't know. One of the police officers took it.

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ABRAHAM SCHWARTZ—for Government—Cross

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(958)

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Q. Was anything else said at the time that you can recall? A. We just took Freddy's and Vickey's phone number. It was all right with them. They weren't interested in where they got their drugs from just as long as they got them.

Q. Well, now, up until this time, you had told us that you knew about Fred and Vickey? A. That is right.

Q. You never went to their abode, to their residence? A. No, sir.

Q. They never came to your place of residence? A. No, sir.

Q. Where were you living then? A. Living at home.

Q. Where is that? A. In the Bronx.

Mr. Lankenau: Your Honor, once again I can't see any relevancy as to the place where this witness now lives.

The Court: Is it material?

(959)

Mr. Sweeney: Well, it may be a test on his credibility.

The Court: Objection sustained.

Q. With whom do you live there? A. My parents.

Q. Are you married? A. No.

Q. Were you working at the time that you were talking to Fred and Vickey and Rich? A. I stopped working two weeks before that.

Q. Well, where had you been working two weeks before that? A. I was a canvasser for Home Improvements.

Q. What was the name of your employer? A. Shapiro.

Q. And the address of the establishment? A. I worked for an individual. He worked for—he worked for a company and I worked direct for him.

Q. Well, were you on anybody's payroll? A. I was on Shapiro's payroll.

The Court: How long had you worked for Shapiro?

The Witness: Two years.

The Court: Regularly?

(960)

The Witness: Yes, sir.

The Court: Steadily employed?

The Witness: Yes.

The Court: You had not been in any difficulty before this time?

The Witness: No, sir.

By Mr. Sweeney:

Q. Well, then, there came a time when you say that you obtained some narcotics from Rich? A. That is right.

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(961)

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Q. No, I mean approximately the date. A. Somewhere around the third week of June, 1956.

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(962)

Q. Well, then, the next day, did you have delivered to you the narcotics? A. Yes, sir.

Q. Did you pay any money that day? A. No, sir.
Q. That was the third week in June? A. Yes, sir.

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(967)

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Q. Well, now, after you had made the second purchase, was that the occasion when you were arrested? A. That is right, the same day.

The Court: Is that June 29th? Was that the date testified to?

The Witness: Yes, sir.

The Court: June 29th?

(968)

The Witness: Yes, sir.

Q. And you have been convicted? A. Yes, sir.
Q. And you are awaiting sentence? A. That is right.
Q. Well, is it your belief that you will derive some benefit with respect to your sentence by coming here and testifying? A. I don't know.
Q. You don't have any belief about it? A. I don't know.
Q. Did you discuss it with anybody? A. My attorney.
Q. Well, as far as you're concerned you don't know? A. That's right.
Q. You don't have any belief on it? A. No, sir.
Q. Now, when were you convicted? A. It was about two or three weeks ago.
Q. And it was by a plea of guilty? A. Yes, sir.
Q. Has any date been fixed for sentence? A. The 19th or the 21st.

(969)

The Court: Of when?

The Witness: Of this month.

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JOHN DOYLE—for Government—Direct

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(990)

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Q. When did you first see this? A. On the ground between Sierra and Schwartz.

Q. And what happened next? A. I interrogated the two men, and as a result of that questioning I went to Sierra's apartment.

Mr. Sweeney: Now, I object to that, if your Honor pleases, unless the words of the conversation are used.

The Court: Do you want him to state the entire conversation?

Mr. Sweeney: Yes.

(991)

The Court: All right, Mr. Witness, you will have to state what you said to Sierra and Schwartz and what each one of them said to you.

Mr. Kove: May we have a date?

The Court: Pardon me?

Mr. Kove: What is the date of that conversation.

The Court: June 29, 1956, at the time of the arrest.

Mr. Kove: Thank you.

The Witness: I asked the defendant Schwartz his address.

And he told me that it was 1184 Walton Avenue in the Bronx.

I asked Sierra where he lived.

And he told me 425 West End Avenue.

I asked him if they had any additional drugs.

And they said yes.

I asked them where it was, where any additional drugs would be found.

They said at Sierra's residence.

Following that we went to Sierra's residence.

Q. Do you recall whether they said anything else that night during the interrogation? (992) A. Later on I asked them where they got the drugs.

Q. And what did they say? A. They said that they had purchased it.

Mr. Sweeney: Now, if your Honor pleases, may the officer state who said what?

The Court: Yes.

Q. Who was saying this now? A. Well, I questioned them separately.

And Sierra said that he bought the stuff earlier in the day from a fellow by the name of Ritchie.

I asked Schwartz where he got the stuff.

And he stated that he—that Sierra bought the stuff earlier in the day from a fellow by the name of Ritchie.

Q. Was there anything else said in this interrogation that you recall? A. I asked how much they paid for the stuff.

They told me separately and jointly, one or the other—

Mr. Fusco: I object to that, if your Honor pleases.

The Court: Leave out "one or the other, separately and jointly."

The Witness: In each other's company that (993) they had agreed——

Mr. Fusco: I object to that, your Honor, "that they had agreed."

The Court: What was said? Is that what they said, that they had agreed?

The Witness: That is correct, your Honor.

Mr. Fusco: I withdraw that. I did not understand it.

The Witness: They were paying $400 for the drugs. They said that they had actually paid 100 and owed 300 and it was to be paid subsequent to this time to this man Rich.

Q. Was there anything else said in this interrogation that you recall? A. Not to my knowledge.

Q. Now, after this interrogation where did you go? A. To Sierra's residence.

Q. And what happened there? A. On further questioning in the room of Sierra about the drug, he directed Schwartz to give me the stuff as he called it.

Q. What happened then? A. Schwartz went to the kitchen and reached up into the ceiling and removed from above the cupboard (994) a bank envelope which contained—which in turn contained a glassine envelope of white powder.

Mr. Lankenau: Will you please mark this for identification?

(Government Exhibit 21 for identification.)

Q. I show you Government Exhibit 18 for identification and ask you if you have ever seen that before? A. Yes, I have.

Q. When did you see it? A. When Schwartz handed it to me.

Q. Is this the package that was handed to you by Schwartz on the occasion you just testified to? A. Yes, it is.

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ROBERT CLARKE—for Government—Direct

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(1001)

Q. In what condition were Government Exhibits 17, 18 and 19 when you received them? A. Exhibit 17 was sealed with a gum tape seal which is still present.

Exhibit 18 contained a double glassine envelope which was sealed at the time that I opened it and this can to the best of my recollection, it was not sealed, but it had initials on it which it still has.

Q. Did you analyze Government Exhibits 18, 17 and 18? A. Yes, I did.

Q. What were the results of those analyses? A. I found that Exhibits 17 and 18 contained heroin in the concentration of 60.1 per cent.

Mr. Lankenau: I have no further questions. I offer it in evidence at this time Government Exhibits 17, 18, 19 and 20 for identification.

Mr. Kove: I respectfully object on the ground that it is not binding on the defendant Carminati.

The Court: Government Exhibits 17 and 18 were offered during the course of the testimony by witness——

Mr. Lankenau: Doyle.

Colloquy of Counsel

The Court: Which witness was it?

(1002)

Mr. Lankenau: The police detective.

The Court: I am asking about Government Exhibits 17 and 18.

Mr. Lankenau: Yes, sir.

The Court: And they were offered through whom?

Mr. Lankenau: They were identified by Doyle but they were not offered, your Honor. They were offered through the testimony of this witness.

The Court: I understand that they were first identified by the witness Doyle, is that right?

Mr. Lankenau: That is correct, your Honor.

The Court: And is that the envelope that he obtained from Schwartz?

Mr. Lankenau: That is correct, your Honor.

The Court: And the other man who was with him at the time?

Mr. Lankenau: That is correct.

The Court: They will be admitted.

(Government Exhibits 17 for identification through 20 for identification now received in evidence.)

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